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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TERESA FLORES VALDEZ,

9 Plaintiff,

10 v.

11 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

12 Defendant.

CASE NO. C16-1870-RJB-BAT

REPORT AND RECOMMENDATION

13 Plaintiff Teresa Flores Valdez seeks review of the denial of her Supplemental Security
14 Income application. She contends the ALJ erred (1) at step two by failing to include all severe
15 impairments; (2) in assessing medical opinions; (3) by discounting Ms. Flores Valdez's
16 subjective statements; and (4) at step five in relying on vocational testimony elicited in response
17 to an incomplete hypothetical.¹ Dkt. 18 at 1. As discussed below, the Court recommends the
18 case be **REVERSED** and **REMANDED** for further administrative proceedings under sentence
19 four of 42 U.S.C. § 405(g).

20 **BACKGROUND**

21 Ms. Flores Valdez is currently 26 years old, has a high school diploma and no work
22

23 ¹ The fourth assignment of error reiterates arguments made elsewhere, and need not be addressed separately. See Dkt. 18 at 18.

1 history.² On December 27, 2011, she protectively applied for benefits, alleging disability as of
2 her date of birth. Tr. 189-94, 266. Her application was denied initially and on reconsideration.
3 Tr. 89-92, 96-99. The ALJ conducted a hearing on March 5, 2013 (Tr. 31-62), and subsequently
4 found Ms. Flores Valdez not disabled. Tr. 17-27.

5 The Appeals Council denied Ms. Flores Valdez's request for review (Tr. 1-4), and Ms.
6 Flores Valdez sought judicial review. The U.S. District Court for the Western District of
7 Washington granted the parties' stipulation to reverse the ALJ's decision and remand for further
8 administrative proceedings. Tr. 410-11.

9 The ALJ held a second hearing on June 16, 2016. Tr. 340-82. On August 26, 2016, the
10 ALJ found Ms. Flores Valdez not disabled. Tr. 321-34. Ms. Flores Valdez seeks judicial review
11 of that decision. Dkt. 5.

12 THE ALJ'S DECISION

13 Utilizing the five-step disability evaluation process,³ the ALJ found:

14 **Step one:** Ms. Flores Valdez had not engaged in substantial gainful activity since her
15 application date.

16 **Step two:** Ms. Flores Valdez's learning disorder, expressive language disorder, and
borderline intellectual functioning are severe impairments.

17 **Step three:** These impairments did not meet or equal the requirements of a listed
18 impairment.⁴

19 **Residual Functional Capacity ("RFC"):** Ms. Flores Valdez has the RFC to perform a
full range of work at all exertional levels, with the following non-exertional limitations:
20 she can perform unskilled, repetitive, routine work, with no contact with the public and
occasional contact with supervisors and co-workers.

21 **Step four:** Ms. Flores Valdez has no past work.

22 ² Tr. 35-36, 270.

23 ³ 20 C.F.R. §§ 404.1520, 416.920.

⁴ 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 Accordingly, Ms. Flores Valdez’s reference to these opinions does not establish error in the
2 ALJ’s decision.

3 Ms. Flores Valdez also challenges the ALJ’s finding that her arm symptoms did not meet
4 the twelve-month durational requirement, by pointing to a February 2012 record describing Ms.
5 Flores Valdez’s reported symptoms as well as an April 2013 report. Dkt. 18 at 4. That more
6 than twelve months expired between these reports does not establish that the symptoms meet the
7 durational requirement, because there is no evidence that Ms. Flores Valdez’s symptoms
8 continuously existed during the interim. *See* 42 U.S.C. § 423 (d)(1)(A) (disability means
9 “inability to engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment . . . which has lasted or can be expected to last for a continuous
11 period of not less than 12 months”). The ALJ’s summary of Ms. Flores Valdez’s left-arm
12 complaints describes them as “intermittent” (Tr. 325) and her identification of sporadic
13 complaints does not establish error in the ALJ’s decision.

14 Ms. Flores Valdez also points to 2015 treatment records related to her arm condition, but,
15 as found by the ALJ, these records indicate that her symptoms resolved with physical therapy in
16 three months. Dkt. 18 at 4-5; Tr. 521-29. The records indicate that Ms. Flores Valdez was
17 discharged from physical therapy, having met all of her goals for improved function. Tr. 529-32.
18 Although Ms. Flores Valdez correctly notes that none of her providers opined that she had no
19 remaining functional limitations at the end of her physical therapy treatment (Dkt. 18 at 6), it is
20 Ms. Flores Valdez’s burden to show that she has a severe impairment. *Tackett v. Apfel*, 180 F.3d
21 1094, 1098 (9th Cir. 1999). Pointing to a lack of evidence describing her limitations does not
22 satisfy her burden.

23 Ms. Flores Valdez also argues the ALJ erred in relying on her lack of treatment for her

1 arm condition during most of the adjudicated period, indicating that the ALJ should have
2 considered why she did not seek treatment. Dkt. 18 at 7. But there is no evidence in the record
3 related to her reasons for not seeking treatment. Ms. Flores Valdez points to a statement she
4 made to agency personnel, regarding her lack of insurance, but this statement in its entirety only
5 further undermines her complaints of a severe arm impairment: “Claimant does not see a doctor
6 since she is healthy and her condition o[f] mentally delayed is not treated with medication.
7 Claimant does not have medical coverage and would only go to the doctor in case of a severe
8 illness.” Tr. 296. Although Ms. Flores Valdez also cites her mental impairments as a reason that
9 she did not seek treatment, there is no evidence in the record that her mental limitations caused
10 her to be unable to seek treatment, particularly because she eventually did seek treatment, in
11 2015. Dkt. 18 at 7-8.

12 For all of these reasons, Ms. Flores Valdez has failed to show an error in the ALJ’s step-
13 two findings, and they should be affirmed.

14 **B. The ALJ properly rejected Ms. Flores Valdez’s testimony**

15 The ALJ discounted Ms. Flores Valdez’s testimony, finding that although she has some
16 limitations, those limitations are not disabling in light of medical evidence showing that she can
17 perform unskilled work, and her own description of her activities. Tr. 329-31. The ALJ also
18 cited evidence showing Ms. Flores Valdez lacks the motivation to work, rather than the ability to
19 work. *Id.* Ms. Flores Valdez contends that these reasons are not clear and convincing, as
20 required in the Ninth Circuit. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

21 **1. Medical evidence**

22 The ALJ cited the opinion of consultative examiner Kees Hofman, Ph.D., as evidence
23 that Ms. Flores Valdez could perform unskilled work, as well as school records indicating that

1 she could adequately communicate. Tr. 329-30. Ms. Flores Valdez argues that the ALJ
2 overlooked Dr. Hofman's opinion that she would require a change of environment or placement
3 in a residential setting, in order to make changes in her life. Dkt. 18 at 18-19.

4 But, as noted by the ALJ, Dr. Hofman attributed Ms. Flores Valdez's problems to her
5 overprotective family. Tr. 304-05. Such limitations are not relevant to the ALJ's inquiry, which
6 is concerned with determining the limiting effects of Ms. Flores Valdez's medically
7 determinable impairments. Tr. 332. Likewise, Dr. Hofman's opinion does not indicate most that
8 Ms. Flores Valdez can do, and it therefore has less probative value to the ALJ's inquiry. 20
9 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1) (RFC "is the most you can still do despite your
10 limitations."). Accordingly, Ms. Flores Valdez has not shown that the ALJ erred in assessing the
11 medical evidence, specifically Dr. Hofman's opinion, in finding it to be inconsistent with
12 allegations of disability.

13 **2. Ms. Flores Valdez's activities**

14 The ALJ noted inconsistencies between Ms. Flores Valdez's testimony describing limited
15 computer use, specifically an inability to understand Facebook, with her report to Dr. Hofman
16 that her daily activities include checking Facebook. Tr. 330. Ms. Flores Valdez contends there
17 is no inconsistency in the statements, because she testified that she required help from her
18 cousins to use Facebook and she sees them often, so she could have been referring to using
19 Facebook with her cousins during Dr. Hofman's evaluation. Dkt. 18 at 19. The entirety of Ms.
20 Flores Valdez's testimony about her Facebook use can be reasonably found inconsistent with her
21 report to Dr. Hofman, however. She testified, in relevant part:

22 [ALJ]: Do you have a Facebook account?

23 [Ms. Flores Valdez]: No.

1 [ALJ]: Have you ever been on Facebook?

2 [Ms. Flores Valdez]: Yeah, with my cousins, yeah. My cousins made me one so I
3 don't feel like alone and stuff. But I don't go on it.

4 [ALJ]: And did your cousins make a Facebook account for you?

5 [Ms. Flores Valdez]: Uh-huh.

6 [ALJ]: Is that a yes?

7 [Ms. Flores Valdez]: Yes, Your Honor.

8 [ALJ]: Did they show you how to get on and read messages from your friends?

9 [Ms. Flores Valdez]: Yeah, but it's too confusing. It's too much for me.

10 [ALJ]: Did you read any of the messages when they pulled them, of your friends?

11 [Ms. Flores Valdez]: Yeah.

12 [ALJ]: And do you remember what any of them said, what kinds of things they
13 said, the messages from your friends?

14 [Ms. Flores Valdez]: No, like I can't like summarize them like how you been,
15 Teresa, how's life treating you, and stuff like I haven't seen you for awhile and
16 stuff.

17 [ALJ]: Do you remember what you answered?

18 [Ms. Flores Valdez]: No, I think I only like I've been good and that's it. That's
19 the only thing I can remember.

20 Tr. 39. The ALJ reasonably found this description of minimal Facebook use to be inconsistent
21 with Ms. Flores Valdez's report to Dr. Hofman, which suggested more regular use. *See* Tr. 330.

22 Ms. Flores Valdez also argues the ALJ erred in finding her ability to watch a movie, play
23 board games, read, watch television, and complete household chores and personal care activities
to undermine allegations of concentration deficits, because she testified that she had problems
engaging in all of these activities. Dkt. 18 at 19-20. As noted by the ALJ, Ms. Flores Valdez's
statements to providers do not describe similar limitations. *See, e.g.*, Tr. 303-04, 531-32. Ms.

Flores Valdez goes on to point to the ALJ's reasoning with regard to a lay statement written by her mother, regarding Ms. Flores Valdez's ability to babysit. Dkt. 18 at 22 (citing Tr. 331). Ms. Flores Valdez argues that her testimony shows that she did not babysit, yet she reported to Dr. Hofman that she did babysit on rare occasions. *See* Tr. 303. Although Ms. Flores Valdez suggests that the ALJ should have credited her hearing testimony, the ALJ did not err in noting that other statements she made to providers were reasonably inconsistent with her testimony and allegations. *See* Social Security Ruling 16-3p, 2016 WL 1119029, at *4 (Mar. 16, 2016) (instructing adjudicators to consider the entire record when evaluating a claimant's symptoms). The ALJ did not err in finding that Ms. Flores Valdez's inconsistent statements describing her abilities and activities undermined the veracity of her subjective testimony.

3. Lack of motivation

Ms. Flores Valdez argues the ALJ erred in discounting her subjective testimony on the grounds that she lacks motivation to work, because her lack of motivation stems from her borderline intellectual functioning, as indicated by Dr. Hofman. Dkt. 18 at 22-23.

Dr. Hofman's opinion does not explicitly link Ms. Flores Valdez's borderline intellectual functioning with her lack of motivation, however. Instead, Dr. Hofman posited that *either* Ms. Flores Valdez's intellectual deficits *or* her lack of motivation have stopped her from exploring career planning on her own, and her family limits her development as well. Tr. 304-05. Dr. Hofman's recommendations for a change of environment suggest that Ms. Flores Valdez's lack of motivation results from her family and living environment, rather than her impairments. Consequently, the ALJ reasonably found that the evidence suggested a lack of motivation to work, and did not err in discounting Ms. Flores Valdez's testimony on that basis. *See Osenbrock*

1 *v. Apfel*, 240 F.3d 1157, 1165-67 (9th Cir. 2001) (finding that an ALJ properly discounted a
2 claimant's testimony due to evidence of self-limitation and lack of motivation).

3 Ms. Flores Valdez also argues that the ALJ's decision is internally inconsistent with
4 regard to her attempt at nursing school. Dkt. 18 at 23. The ALJ noted that Ms. Flores Valdez
5 told a provider that she had to drop out of nursing school, but that there was no evidence of her
6 pursuing schooling, vocational training, or work. Tr. 331 (citing Tr. 316). In fact, she explicitly
7 denied applying for any school after high school at the first administrative hearing. Tr. 36. In
8 any event, this evidence does not undermine the ALJ's findings with regard to Ms. Flores
9 Valdez's lack of motivation.

10 Because the ALJ provided multiple clear and convincing reasons to discount Ms. Flores
11 Valdez's subjective testimony, the ALJ's findings in this regard should be affirmed.

12 **C. The ALJ's evaluation of the medical opinions**

13 Ms. Flores Valdez argues the ALJ erred in assessing opinions provided by State agency
14 medical consultant Dennis Koukol, M.D.; Dr. Hofman; and State agency psychological
15 consultants Eugene Kester, M.D., and James Bailey, Ph.D.

16 Where not contradicted by another physician, a treating or examining physician's opinion
17 may be rejected only for "'clear and convincing'" reasons. *Lester v. Chater*, 81 F.3d 821, 830
18 (9th Cir. 1996) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where
19 contradicted, a treating or examining physician's opinion may not be rejected without "'specific
20 and legitimate reasons' supported by substantial evidence in the record for so doing." *Id.* at 830-
21 31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). "[T]he findings of a
22 nontreating, nonexamining physician can amount to substantial evidence, so long as other
23

evidence in the record supports those findings.” *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996).

1. Dr. Koukol

As discussed above, Dr. Koukol described Ms. Flores Valdez’s arm condition as not severe, but also referenced several physical limitations that it caused. Tr. 80-84. The ALJ rejected Dr. Koukol’s opinion, finding that the limitations he assessed were inconsistent with an opinion that her impairment was not severe. Tr. 326. The ALJ also noted that Dr. Koukol cited no medical evidence that supports those restrictions, and that his opinion was inconsistent with Ms. Flores Valdez’s lack of treatment at the time, and her rapid improvement with subsequent physical therapy. *Id.*

The lack of clinical findings supporting Dr. Koukol’s opinion indicates that it does not amount to substantial evidence, despite Ms. Flores Valdez’s argument that Dr. Koukol’s opinion is “consistent with independent clinical findings reported by Plaintiff’s examining physical therapist; examining psychologist Dr. Hofman; and Plaintiff’s testimony.” Dkt. 18 at 11. At the time that Dr. Koukol rendered his opinion, Ms. Flores Valdez had not yet sought physical therapy and had not testified at an administrative hearing; the only clinical evidence cited in Dr. Koukol’s assessment form is Dr. Hofman’s opinion. *See* Tr. 82-84. Dr. Hofman’s psychological opinion does not constitute independent clinical findings that can support Dr. Koukol’s opinion, because Dr. Hofman did not perform a physical examination, and such an examination would have been out of his area of expertise as a psychologist. Because Dr. Koukol’s opinion was not based on independent clinical evidence, as found by the ALJ, it does not constitute substantial evidence.

Ms. Flores Valdez argues that the ALJ erred in rejecting Dr. Koukol’s opinion on the

1 grounds that she had no severe physical impairment, but this argument is based on a
2 misunderstanding of the ALJ's decision. The ALJ found Dr. Koukol's opinion to be internally
3 inconsistent — the inconsistency is between Dr. Koukol's description of Ms. Flores Valdez's
4 limitations and his opinion that she has no severe physical impairment. Thus, the ALJ did not
5 reason "backward," as alleged by Ms. Flores Valdez, from his own step-two finding, but instead
6 noted an inconsistency within Dr. Koukol's opinion. Dkt. 18 at 11. That inconsistency is a clear
7 and convincing reason to discount Dr. Koukol's opinion. *See Morgan v. Comm'r of Social Sec.*
8 *Admin.*, 169 F.3d 595, 603 (9th Cir. 1999) (ALJ appropriately considers internal inconsistencies
9 within and between physicians' reports).

10 **2. Dr. Hofman**

11 The ALJ gave partial weight to Dr. Hofman's opinion:

12 The undersigned notes that Dr. Hofman did not provide a function-by-function
13 analysis. Yet, he opined that a significant part of the claimant's problems related
14 to her environment, which allowed her to be passive and dependent on her family.
15 While this may be true, this factor provide[s] minimal insight into the most the
16 claimant is capable of doing. The undersigned also gives little weight to Dr.
17 Hofman[']s Global Assessment of Functioning (GAF) score of 45 ([Tr. 304]).
18 However, GAF scores are highly subjective. The GAF scores intertwine
19 psychological symptoms, physical impairments, and socioeconomic factors, and
20 therefore not completely reliable. However, the undersigned gives weight to
21 objective testing by Dr. Hofman.

22 Tr. 332.

23 Ms. Flores Valdez contends that the ALJ erred in faulting Dr. Hofman primarily for
failing to provide a function-by-function analysis, because Dr. Hofman was not required to
provide such an analysis. Dkt. 18 at 14. But the ALJ did not indicate that Dr. Hofman was
required to provide a function-by-function analysis, and therefore Ms. Flores Valdez's argument
is irrelevant. The ALJ, however, is bound to perform a function-by-function analysis, which

1 renders Dr. Hofman's opinion less probative as to that inquiry because it does not address Ms.
2 Flores Valdez's abilities to perform various work activities.

3 Furthermore, as noted by the ALJ, Dr. Hofman's opinion attributes some of Ms. Flores
4 Valdez's problems to her family environment, which is not a medically determinable
5 impairment, and the opinion therefore does not address the most that Ms. Flores can do. This
6 reasoning is persuasive, because Dr. Hofman's opinion addresses issues beyond the scope of the
7 ALJ's inquiry. *See* SSR 96-8p, 1996 WL 374184, at *1 ("The RFC assessment considers only
8 functional limitations and restrictions that result from an individual's medically determinable
9 impairment or combination of impairments[.]").

10 Lastly, the ALJ noted that Dr. Hofman's GAF score was subjective and considered issues
11 beyond the scope of a disability determination, and was therefore entitled to little weight. Tr.
12 332. This reasoning is persuasive, because Dr. Hofman did not explain the basis for his GAF
13 score and GAF scores do not correspond directly to the requirements of the Social Security
14 disability program. *See McFarland v. Astrue*, 288 F3d. Appx. 357, 359 (9th Cir. Jul. 25, 2008).

15 The ALJ's reasons to assign only partial weight to Dr. Hofman's opinion are clear and
16 convincing, and therefore this portion of the ALJ's reasoning should be affirmed.

17 **3. Drs. Kester & Bailey**

18 State agency psychological consultants Drs. Kester and Bailey described Ms. Flores
19 Valdez's mental limitations, and the ALJ purported to give partial weight to their assessment.
20 Tr. 332 (referencing Tr. 71-73, 84-86). The ALJ did not, however, provide any reason to
21 discount any portion of their assessment. Tr. 332. Ms. Flores Valdez contends that this is error
22 because the ALJ's RFC assessment does not fully account for all of the restrictions identified by
23 Drs. Kester and Bailey, specifically their indication that she could not perform detailed work,

1 could work with only a “few” co-workers, and required a “relatively lower stress
2 environment[.]” *See* Tr. 85-86.

3 The Commissioner contends that the RFC assessment adequately accounts for a
4 prohibition on “detailed” work, because the ALJ limited Ms. Flores Valdez to unskilled,
5 repetitive, routine work. Dkt. 22 at 13. But unskilled, repetitive, routine work is not necessarily
6 simple, and therefore does not necessarily preclude detailed work. *See* SSR 00-4p, 2000 WL
7 1989704, at *3 (Dec. 4, 2000) (explaining that “unskilled” work corresponds to jobs requiring
8 Specific Vocational Preparation level 1-2); *Gonzales v. Astrue*, 2012 WL 14002, at *13 (E.D.
9 Cal. Jan. 4, 2012) (“Defining particular jobs as ‘unskilled’ speaks more to the issue of the level
10 of vocational necessary to perform the job rather than the issue of the job’s simplicity . . .”).
11 Accordingly, the ALJ’s RFC assessment does not fully account for the State agency consultants’
12 opinions that Ms. Flores Valdez cannot perform detailed tasks, and the ALJ provides no reason
13 why their opinions were rejected.

14 The Commissioner’s defense as to the co-worker issue is similarly unpersuasive. The
15 Commissioner argues that the ALJ accounted for the State agency opinions that Ms. Flores
16 Valdez was restricted to working with a “few” co-workers by limiting her to occasional co-
17 worker interaction. Dkt. 22 at 13-14. But a restriction to occasional interaction address the
18 frequency of the interaction, rather than the number of people interacted with. Thus, the ALJ’s
19 RFC assessment is not fully consistent with the State agency opinions, and the ALJ did not
20 provide any reason to depart from those opinions.

21 Because the ALJ erred in at least these two ways in assessing the State agency opinions,
22 and these errors impacted the RFC assessment and are therefore harmful, the ALJ’s decision
23 must be reversed. Although Ms. Flores Valdez suggests the ALJ’s errors could be remedied by a

1 remand for a finding of disability, a remand for administrative proceedings is instead
2 appropriate, in light of the conflicts in the record that should be resolved through further
3 administrative proceedings. *See Treichler v. Comm'r of Social Sec. Admin.*, 775 F.3d 1090,
4 1105 (9th Cir. 2014).

5 **CONCLUSION**

6 For the foregoing reasons, the Court recommends that the Commissioner's decision be
7 **REVERSED** and the case be **REMANDED** for further administrative proceedings under
8 sentence four of 42 U.S.C. § 405(g).

9 On remand, the ALJ should reassess the State agency psychological consultants'
10 opinions. The ALJ shall use the five step disability process, develop the record as needed, and
11 reassess Ms. Flores Valdez's RFC and ability to perform work at step as appropriate.

12 A proposed order accompanies this Report and Recommendation. Any objection to this
13 Report and Recommendation must be filed and served no later than **June 27, 2017**. If no
14 objections are filed, the Clerk shall note the matter for **June 30, 2017**, as ready for the Court's
15 consideration. If objections are filed, any response is due within 14 days after being served with
16 the objections. A party filing an objection must note the matter for the Court's consideration 14
17 days from the date the objection is filed and served. Objections and responses shall not exceed
18 ten pages. The failure to timely object may affect the right to appeal.

19 DATED this 13th day of June, 2017.

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21 
22 **BRIAN A. TSUCHIDA**
23 United States Magistrate Judge